

P.E.R.C. NO. 86-86

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NUTLEY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-85-15

EDUCATION ASSOCIATION OF NUTLEY,,

Respondent.

SYNOPSIS

The Public Employment Relations Commission partially restrains and partially declines to restrain binding arbitration of a grievance which the Education Association of Nutley has filed. The grievance alleges that the Board violated its collective negotiations agreement with the Association when the high school principal placed a written reprimand in the file of Mark Blaustein, a tenured guidance counsellor, without giving him the opportunity to submit a written rebuttal and when the principal criticized Blaustein and the entire guidance department at subsequent meetings.

The Commission restrains binding arbitration of that portion of the grievance alleging that the principal's statements at a department meeting discriminated against the guidance counsellor and denied him his rights under school laws and other statutes. The Commission declines to restrain binding arbitration of those portions of the grievance alleging violations of contractual evaluation and complaint procedures.

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Appearances:

For the Petitioner, Aron & Salsberg, Esqs.
Lester Aron and Richard Bauch, of Counsel)

For the Respondent, Klausner & Hunter, Esqs.
(Stephen B. Hunter, of Counsel)

DECISION AND ORDER

On September 18, 1984, the Nutley Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks a restraint of binding arbitration of a grievance which the Education Association of Nutley ("Association") filed. The grievance alleges that the Board violated its collective negotiations agreement with the Association when the high school principal placed a written reprimand in the file of Mark Blaustein, a tenured guidance counsellor, without giving him the opportunity to submit a written rebuttal and when the principal criticized Blaustein and the entire guidance department at subsequent meetings.

The parties have filed briefs, reply briefs and exhibits. The following facts appear.

The Association is the majority representative of the Board's teachers, guidance counsellors and other professional and non-professional employees. The Board and the Association entered a collective negotiations agreement effective from July 1, 1982 through June 30, 1984. That agreement contains a grievance procedure which ends in binding arbitration of certain grievances.

On January 4, 1984, a meeting was held at Nutley High School to review course offerings for the next year. In attendance were the principal and two vice-principals, the high school guidance director and guidance counsellors, and the chairperson of the Fine and Industrial Arts department.

On January 5, 1984, the principal of Nutley High School issued a written reprimand to Mark Blaustein, a tenured guidance counsellor. The reprimand stated:

Please be informed that I am extremely concerned regarding your perception of credit/course requirements for students at Nutley High School and state regulations for credit and time requirements for secondary schools. You repeatedly informed the guidance and administrative personnel that we offer four (4)-credit courses at the high school. This is a gross misrepresentation of the credit policy here. Further, your apparent complete ignorance of how course credit relates to time in class/task (as indicated by state regulations) is appalling. This, in concert with your general commentary in the meeting(s) was deplorable, and I look forward to immediately reviewing the above with you and Mr. McCarthy.^{1/}

^{1/} Mr. McCarthy is the Director of Guidance.

On January 23, 1984, the Association filed a grievance alleging that this written reprimand violated contractual articles pertaining to teacher rights (Article IV, A and B), evaluation procedures (Article XIV, D2) and complaint procedures (Article XV, A and B). The grievance specifically alleged that the principal had denied Blaustein the opportunity to submit a written rebuttal and had signed Blaustein's name in the space indicating Blaustein had an opportunity to review the reprimand; this conduct allegedly violated contractual evaluation procedures calling for an opportunity to review and rebut reprimands before they are filed.

The grievance also alleged that on January 6, 1984, the principal reiterated his charges at a meeting with Blaustein and other guidance counsellors; this conduct allegedly discriminated against Blaustein because of his Association activity and denied him his rights under school laws and other statutes. The grievance also alleged that at this meeting, the principal stated he was "appalled at the naivete of the entire guidance department;" this statement allegedly violated contractual complaint procedures providing full disclosure of the nature of the complaint; an opportunity to rebut a complaint and attempts to resolve complaints informally.

The grievance did not allege that the reprimand was issued without just cause. The collective negotiations agreement does not require just cause for discipline.

On January 30, 1984, the principal afforded Blaustein an opportunity to submit a written rebuttal; Blaustein submitted one. The principal denied the rest of the grievance as contractually unfounded.

On February 3, 1984, the Association appealed to the superintendent and reiterated that the written reprimand was false and illegal. The superintendent conducted a hearing and denied the grievance. The superintendent, however, stated that he and the principal had revised it to read:

Please be informed that I am extremely concerned regarding your conduct at the meeting listed above. Your responses to proposed guidelines established for student scheduling purposes were often inappropriate, rude, and inflammatory. With regard to the subject matter of the discussion, I suggest that you review course-credit guidelines established by the State to eliminate any misconceptions of our policy. I look forward to immediately reviewing the above with you and Mr. McCarthy.

The superintendent stated that this memorandum would be placed in Blaustein's file after the grievance procedures.

The Association appealed to the Board. On May 29, 1984, after a hearing, the Board denied the grievance.

The Association sought arbitration. It framed the issue as whether the Board had just cause to issue the written reprimand. This petition ensued.^{2/}

^{2/} The parties postponed arbitration. Each party also received extensions of time to file their briefs.

On November 18, 1985, the Commission heard oral argument. The Board conceded that the reprimand was disciplinary in nature, but asserted that the Association had not grieved under a just cause provision and, in any event, there was an alternate statutory appeal procedure requiring the Commissioner of Education, upon application, to review the reprimand. The Association asserted that its grievance predominantly involves the mandatorily negotiable issues of evaluation and complaint procedures, not discipline since there is no just cause dispute. It asserted, in the alternative, that if the Commission found its grievance predominantly involved a disciplinary dispute, the Commission should find this minor disciplinary determination arbitrable under CWA v. PERC, 193 N.J. Super. 658 (App. Div. 1984), certif. den. ___ N.J. ___ (1985). The Association also stressed that the grievance was an organizational one rather than simply a protest on behalf of an individual employee.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 154 (1977); Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975). Thus, we do not address the merits of the grievance or the defenses nor do we consider whether the Board has agreed to arbitration. It is also not dispositive that the Board may or may not have already afforded some of the relief requested -- an opportunity to submit a written rebuttal. Instead, we decide only the abstract question of whether the Board could legally agree under section 5.3, as amended, to binding arbitration of this grievance.

We now decide what is in dispute. Both the Association and the Board have agreed that this case does not predominantly involve a disciplinary dispute. We agree. There is no contractual just cause provision and the original grievance does not raise a just cause issue. While the demand for arbitration does, the subsequent arguments appear to retract that claim. We thus proceed on the assumption that no just cause claim will be submitted to binding arbitration and therefore do not determine whether one could be.^{3/}

^{3/} We have not decided the arbitrability of disciplinary disputes affecting tenured teaching staff members. Generally, under an amendment to N.J.S.A. 34:13A-5.3, an employer may agree to binding arbitration of a disciplinary dispute provided the employee has no statutory protection or appeal procedure concerning the particular type of discipline imposed. CWA v. PERC, supra; Bergen County Law Enforcement Group, Superior Officers, PBA Local No. 134 v. Bergen County Bd. of Chosen Freeholders, 191 N.J. Super. 319 (App. Div. 1983); East Brunswick Bd. of Ed., P.E.R.C. No. 84-149, 10 NJPER 426 (¶15192 1981), aff'd App. Div. Dkt. No. 5569-83T6 (March 14, 1985), certif. den. ___ N.J. ___ (May 24, 1985). Under these cases, school boards may agree to submit a variety of

The first portion of the grievance alleges that the principal denied Blaustein an opportunity to submit a written rebuttal and had falsely signed Blaustein's name in the space indicating that Blaustein had an opportunity to review the reprimand before it was filed. Unquestionably, these allegations present procedural and arbitrable issues. Bethlehem Bd. of Ed. v. Bethlehem Ed. Assn., 91 N.J. 38 (1982); Edison Twp. Bd. of Ed., P.E.R.C. No. 83-40, 8 NJPER 899 (¶13281 1982). That an individual employee may have received an after-the-fact opportunity to file a rebuttal does not diminish a majority representative's interest in asserting its organizational rights to uphold such procedures.

The second portion of the grievance alleges that the principal's statements at a January 6 meeting discriminated against Blaustein and denied him his rights under school laws and other statutes. The nature of the alleged discrimination and the alleged statutory right denied is not spelled out. Given the parties' positions that discipline is not the predominant issue in dispute, we do not perceive a basis for an arbitrator reviewing the merits of the principal's criticisms.^{4/} A bare allegation of discrimination will

3/ Footnote Continued From Previous Page

disciplinary disputes involving non-professional employees to binding arbitration. Such disputes include increment withholdings, reprimands, fines, suspensions, and, for non-tenured employees, mid-year discharges.

4/ Again, we are not suggesting that such a disciplinary dispute would or would not be arbitrable.

not suffice. Teaneck Bd. of Ed. v. Teaneck Ed. Assn, 94 N.J. 9 (1983). Nor will an alleged deprivation of freedom of speech suffice absent a disciplinary dispute. Rutgers, The State University, P.E.R.C. No. 84-44, 9 NJPER 661 (¶14286 1985). While we would find arbitrable allegations that the Board violated procedural rights guaranteed by statute and incorporated in the contract, such allegations have not been specified here. Accordingly, we will restrain binding arbitration of the second portion of the grievance.

The third portion of the grievance alleges that the Board violated contractual complaint procedures when he told guidance counsellors he was "appalled at the naivete of the entire guidance department." The complaint procedures include meeting with the teacher who may request an Association representative, telling the teacher the full nature of the complaint, attempting to resolve the matter informally, giving the teacher an opportunity to rebut in writing the complaint and making a written record of the disposition. These procedures do not bind third party complainants (such as parents and students). They are mandatorily negotiable and allegations that they have been violated may be submitted to binding arbitration.^{5/} North Plainfield Bd. of Ed., P.E.R.C. No. 83-103, 9 NJPER 136 (¶14064 1983), recon. denied, P.E.R.C. No. 83-120, 9 NJPER 208 (¶14096 1983).


^{5/} The issue at arbitration, of course, will not be whether the entire guidance department was naive; the issue will instead be whether the principal complied with any applicable complaint procedures.

ORDER

The Public Employment Relations Commission restrains binding arbitration to the extent the grievance alleges violations of Article IV, A and B or otherwise challenges the decision to reprimand Mark Blaustein.

The Commission declines to restrain binding arbitration to the extent the grievance alleges violations of Articles XII, D2 and XV, A and B or otherwise challenges evaluation or complaint procedures.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioner Hipp abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey
December 12, 1985
ISSUED: December 13, 1985